



BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-421-811]

Purified Carboxymethylcellulose from the Netherlands: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Intent to Rescind

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: In response to requests from petitioner Aqualon Company, a unit of Hercules Incorporated and a U.S. manufacturer of purified carboxymethylcellulose, and Akzo Nobel Functional Chemicals B.V. (Akzo Nobel), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on purified carboxymethylcellulose (purified CMC) from the Netherlands. This administrative review covers imports of subject merchandise produced and exported by Akzo Nobel and exported by CP Kelco B.V. (CP Kelco) during the period of review of July 1, 2010, through June 30, 2011.

We preliminarily determine that sales of subject merchandise by Akzo Nobel were not made at less than normal value during the period of review and CP Kelco had no shipments of subject merchandise during the period of review. If these preliminary results are adopted in our final results of administrative review, we will issue appropriate assessment instructions to U.S. Customs and Border Protection (CBP). Interested parties are invited to comment on these preliminary results. Parties who submit argument in this review are requested to submit with the argument: (1) a statement of the issues; (2) a brief summary of the argument; and (3) a table of authorities.

EFFECTIVE DATE: [Insert date of publication in the *Federal Register*.]

FOR FURTHER INFORMATION CONTACT: Dena Crossland or Angelica Mendoza, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3362 or (202) 482-3019, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 11, 2005, the Department published the antidumping duty order on purified CMC from the Netherlands.<sup>1</sup> On July 1, 2011, the Department published its notice of opportunity to request an administrative review of this order for the period July 1, 2010, through June 30, 2011.<sup>2</sup>

Pursuant to 19 CFR 351.213(b)(1), Aqualon Company (Aqualon), a unit of Hercules Incorporated, petitioner in this proceeding, filed a July 29, 2011, request that the Department conduct an administrative review of the sales of subject merchandise from Akzo Nobel and CP Kelco during the period of review. Also, pursuant to 19 CFR 351.213(b)(2), on July 29, 2011, Akzo Nobel requested a review of its sales of subject merchandise made during the period of review.

On August 26, 2011, the Department published a notice of initiation of this administrative review, covering exports, sales, and/or entries of purified CMC from Akzo Nobel and CP Kelco in the *Federal Register*.<sup>3</sup>

---

<sup>1</sup> See *Notice of Antidumping Duty Orders: Purified Carboxymethylcellulose from Finland, Mexico, the Netherlands and Sweden*, 70 FR 39734 (July 11, 2005) (CMC Order).

<sup>2</sup> See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 76 FR 38609 (July 1, 2011).

<sup>3</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 76 FR 53404 (August 26, 2011).

The Department issued its antidumping duty questionnaire to Akzo Nobel and CP Kelco on September 19, 2011. On October 11, 2011, CP Kelco timely submitted a letter, in which it certified that it did not have any sales or exports during the period of review. Akzo Nobel responded to the questionnaire on October 21, 2011 (section A questionnaire response (section A response)), on November 9, 2011 (sections B and C questionnaire responses (section B response and section C response)), and on November 16, 2011 (section D questionnaire response (section D response)).<sup>4</sup>

Akzo Nobel responded to a supplemental questionnaire concerning sections A through C of the Department's questionnaire on December 21, 2011. Akzo Nobel responded to supplemental questionnaires concerning section D of the Department's questionnaire on February 24, 2012, May 4, 2012, June 7, 2012, and June 26, 2012.

On March 13, 2012, the Department extended the deadline for the preliminary results of review from April 1, 2012, until July 30, 2012.<sup>5</sup>

On May 25, 2012, the Department received a targeted dumping allegation from petitioner concerning Akzo Nobel. Specifically, petitioner stated that it conducted its own targeted dumping analysis of Akzo Nobel's U.S. sales using the Department's targeted dumping methodology as applied in *Nails* and *Wood Flooring*.<sup>6</sup> Based on their own analysis, petitioner argued that the Department should conduct a targeted dumping analysis and employ monthly

---

<sup>4</sup> Because we disregarded Akzo Nobel sales in the 2009-2010 administrative review that were made at prices below the cost of production, in accordance with section 773(b)(2)(A)(ii) of the Tariff Act of 1930, as amended (the Act), we requested on September 19, 2011, that Akzo Nobel respond to section D of the Department's questionnaire.

<sup>5</sup> See *Purified Carboxymethylcellulose From Finland and the Netherlands: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Reviews*, 77 FR 14733 (March 13, 2012).

<sup>6</sup> See *Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 33977 (June 16, 2008) and *Certain Steel Nails from the United Arab Emirates: Notice of Final Determination of Sales at Less Than Fair Value*, 73 FR 33985 (June 16, 2008) (collectively, "*Nails*"). Petitioner stated that it used the most recent version of the *Nails* programming language as detailed in *Multilayered Wood Flooring From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 64318 (October 18, 2011) (*Wood Flooring*), and accompanying Issues and Decision Memorandum at Comment 4.

average-to-transaction comparisons, in place of monthly average-to-average comparisons, without offsets should the Department find that the record supports its allegation of targeted dumping.<sup>7</sup>

In response to petitioner's targeted dumping allegation, Akzo Nobel argued that the Department does not have the statutory authority to apply a targeted dumping analysis in an administrative review.<sup>8</sup> Akzo Nobel further argued that petitioner's targeted dumping allegation does not provide sufficient grounds for using a comparison methodology different than the Department's average-to-average comparison methodology. Additionally, Akzo Nobel contended that even if the Department decided to conduct a targeted dumping analysis, it may not use one standard deviation to find a pattern of price differences because its use is arbitrary, or in the alternative, statistically inaccurate.

In response to Akzo Nobel's rebuttal comments, petitioner submitted comments on June 28, 2012. Citing 19 CFR 351.414(c)(1), as amended by the *Final Modification for Reviews*,<sup>9</sup> petitioner argued that contrary to Akzo Nobel's claim the Department has the statutory authority to conduct a targeted dumping analysis in this administrative review. Specifically, petitioner argued that in 19 CFR 351.414(c)(1) the Department made clear that “{i}n an investigation *or review*, the Secretary will use the average-to-average method unless the Secretary determines another method is appropriate in a particular case.” (emphasis added). According to petitioner, that language was clearly intended to give the Department the discretion to use the same criteria that the Department examines in original investigations pursuant to section 777A(d)(1)(A) and (B) of the Act to determine whether appropriate circumstances exist.

---

<sup>7</sup> See Petitioner's Allegation of Targeted Dumping, dated May 25, 2012.

<sup>8</sup> See Akzo Nobel Functional Chemicals B.V. targeted dumping comments, dated June 15, 2012.

<sup>9</sup> See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012) (*Final Modification for Reviews*).

For purposes of these preliminary results the Department did not conduct a targeted dumping analysis. In calculating the preliminary weighted-average dumping margin for the mandatory respondent, the Department applied the calculation methodology adopted in *Final Modification for Reviews*. In particular, the Department compared monthly weighted-average constructed export prices with monthly weighted-average normal values and granted offsets for non-dumped comparisons in the calculation of the weighted-average dumping margins. Application of this methodology in these preliminary results affords parties an opportunity to meaningfully comment on the Department's implementation of this recently adopted methodology in the context of this administrative review. The Department intends to continue to consider, pursuant to 19 CFR 351.414(c), whether another method is appropriate in this administrative review in light of parties' pre-preliminary comments and any comments on the issue that parties may include in their case and rebuttal briefs.

#### Preliminary Determination of No Shipments

In its response to the Department's antidumping questionnaire, CP Kelco stated that it had no sales of subject merchandise during the period of review. We later confirmed with (CBP) that this company had no entries of purified CMC from the Netherlands during the period of review. *See* Memorandum to the File regarding No Shipments Inquiries for CP Kelco B.V., dated July 24, 2012. Because the evidence on the record indicates that CP Kelco did not have any entries of subject merchandise to the United States during the period of review, we preliminarily determine that it had no reviewable transactions during this period.

Our past practice concerning no-shipment respondents was to rescind the administrative review if the respondent certified that it had no shipments and we confirmed the certified

statement through an examination of CBP data.<sup>10</sup> We would then instruct CBP to liquidate any entries of merchandise produced by the respondent at the deposit rate in effect on the date of entry. However, in our May 6, 2003, “automatic assessment” clarification, we explained that, where respondents in an administrative review demonstrated that they had no knowledge of sales through resellers to the United States, we would instruct CBP to liquidate such entries at the all-others rate applicable to the proceeding. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*). Because “as entered” liquidation instructions do not alleviate the concerns which the *Assessment Policy Notice* was intended to address, instead of rescinding the review with respect to CP Kelco, we find it appropriate to complete the review and issue liquidation instructions to CBP concerning entries for this company following the final results of the review. If we continue to find that CP Kelco had no reviewable transactions of subject merchandise in the final results, we will instruct CBP to liquidate any existing entries of merchandise produced by CP Kelco but exported by other parties at the all-others rate.<sup>11</sup>

#### Period of Review

The period of review is July 1, 2010, through June 30, 2011.

#### Scope of the Order

The merchandise covered by this order is all purified CMC, sometimes also referred to as purified sodium CMC, polyanionic cellulose, or cellulose gum, which is a white to off-white, non-toxic, odorless, biodegradable powder, comprising sodium CMC that has been refined and

---

<sup>10</sup> See 19 CFR 351.213(d)(3); see also *Certain Large Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (Over 41/2 Inches) From Japan: Final Results of Antidumping Duty Administrative Review*, 77 FR 27428, 27430 (May 10, 2012).

<sup>11</sup> See, e.g., *Magnesium Metal From the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review*, 75 FR 26922, 26923 (May 13, 2010), unchanged in *Magnesium Metal From the Russian Federation: Final Results of Antidumping Duty Administrative Review*, 75 FR 56989 (September 17, 2010).

purified to a minimum assay of 90 percent. Purified CMC does not include unpurified or crude CMC, CMC Fluidized Polymer Suspensions, and CMC that is cross-linked through heat treatment. Purified CMC is CMC that has undergone one or more purification operations, which, at a minimum, reduce the remaining salt and other by-product portion of the product to less than ten percent. The merchandise subject to this order is currently classified in the Harmonized Tariff Schedule of the United States at subheading 3912.31.00. This tariff classification is provided for convenience and Customs purposes; however, the written description of the scope of this order is dispositive.

#### Product Comparisons

In accordance with section 771(16) of the Act, we considered all purified CMC that are covered by the description included in the “Scope of the Order” section above and that was produced and sold by Akzo Nobel in the Netherlands during the period of review to be foreign like product for the purpose of determining appropriate product comparisons to purified CMC sold by the respondent in the United States. For our discussion of home market viability, *see* the “Normal Value” section of this notice below.

In comparing the U.S. sales with the sales of the foreign like product in the comparison market, we used the following methodology. If sales of an identical comparison-market model were reported, we compared the constructed export prices of the U.S. sales to the weighted-average, comparison-market prices of all sales that passed the cost of production test of the identical product during the relevant or contemporary month. *See* sections 771(16) and (35) of the Act; *see also* section 773(b)(1) of the Act. If there were no contemporaneous sales of an identical model, we identified sales of the most similar comparison-market model. *See* section 771(16) of the Act. To determine the most similar model, we matched the physical

characteristics of the foreign like product, as reported by Akzo Nobel, to the characteristics of the subject merchandise in the following order of importance: (1) grade, (2) viscosity, (3) degree of substitution, (4) particle size, and (5) solution characteristics. Where there were no sales of identical or similar foreign like product in the ordinary course of trade with which to compare to a U.S. sale, we made product comparisons using constructed value.

#### Normal Value Comparisons

To determine whether sales of purified CMC from the Netherlands to the United States were made at less than normal value, we compared constructed export price to the normal value, as described in the “Constructed Export Price” and “Normal Value” sections of this notice below. In these preliminary results, the Department applied the weighted-average dumping margin calculation methodology adopted in *Final Modification for Reviews*. In particular, we compared monthly weighted-average constructed export prices with monthly weighted-average normal values and granted offsets for non-dumped comparisons in the calculation of the weighted-average dumping margin.

#### Date of Sale

As stated at 19 CFR 351.401(i), the Department normally will use the respondent’s invoice date as the date of sale unless another date better reflects the date upon which the exporter or producer established the material terms of sale. Akzo Nobel reported the invoice date as the date of sale for the home market and one of the U.S. market channels of distribution (*i.e.*, U.S. market Channel 2) because the date of invoice reflects the date on which the material terms of sale were finalized. For Akzo Nobel’s other U.S. market channel of distribution (*i.e.*, U.S. market Channel 1), Akzo Nobel reported the date of shipment as the date of sale as this date



preceded the invoice date in accordance with the Department's practice.<sup>12</sup> For more information, see Memorandum to the File, from Dena Crossland, International Trade Analyst, through Angelica Mendoza, Program Manager, entitled "Analysis of Data Submitted by Akzo Nobel Functional Chemicals B.V. (Akzo Nobel) in the Preliminary Results of the 2010-2011 Administrative Review of the Antidumping Duty Order on Purified Carboxymethylcellulose (purified CMC) from the Netherlands," dated July 30, 2012 (Akzo Nobel Preliminary Analysis Memo). Consistent with 19 CFR 351.401(i) and Akzo Nobel's response, the Department has preliminarily determined to use invoice date as the date of sale except in those circumstances where shipment date preceded invoice date. In such instances and consistent with the Department's practice, the Department preliminarily determines to use shipment date.

#### Constructed Export Price

In accordance with section 772(b) of the Act, constructed export price is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter.

For purposes of this review, Akzo Nobel classified all of its export sales of purified CMC to the United States as constructed export price (CEP) sales. During the period of review, Akzo Nobel made sales in the United States through its U.S. affiliate, AN-US, which sold the merchandise to unaffiliated customers in the United States. The Department calculated CEP

---

<sup>12</sup> Normally, the Department considers invoice date as the date of sale in accordance with 19 CFR 351.401(i). However, it is the Department's practice to use shipment date as the date of sale when shipment date precedes invoice date. See *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Reviews*, 63 FR 13170, 13172-73 (March 18, 1998); see also *Stainless Steel Sheet and Strip in Coils From the Republic of Korea: Final Results and Rescission of Antidumping Duty Administrative Review in Part*, 72 FR 4486 (January 31, 2007), and accompanying Issues and Decision Memorandum at Comments 4 and 5.

based on packed prices to the first unaffiliated customer in the United States. We made deductions from the starting price, net of discounts, for movement expenses (domestic foreign inland freight and warehousing expenses, domestic inland insurance, domestic brokerage and handling expenses, international freight, marine insurance, U.S. inland insurance, brokerage and handling expenses incurred in the United States, U.S. warehousing expenses, U.S. inland freight, and U.S. customs duties) in accordance with section 772(c)(2)(A) of the Act and 19 CFR 351.401(e). In addition, because Akzo Nobel reported CEP sales in accordance with section 772(d)(1) of the Act, we deducted from the starting price credit expenses and indirect selling expenses, including inventory carrying costs, incurred in the Netherlands and the United States and associated with economic activities in the United States.

In accordance with section 772(d)(3) of the Act, we deducted an amount for CEP profit.

#### Normal Value

##### A. Home Market Viability and Comparison Market Selection

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating normal value (*i.e.*, whether the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared Akzo Nobel's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, consistent with section 773(a)(1)(C) of the Act.

Pursuant to section 773(a)(1)(B) of the Act and 19 CFR 351.404(b), because Akzo Nobel's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise,<sup>13</sup> we determined that

---

<sup>13</sup> See Akzo Nobel's section A response at A-2 and Tab 1.

the home market was viable. Thus, we based normal value on Akzo Nobel's home market sales made in the usual commercial quantities and in the ordinary course of trade.

B. Cost of Production Analysis

In the last administrative review of the order, the Department determined that Akzo Nobel sold purified CMC at prices below the cost of producing the merchandise and, as a result, we excluded such sales from the calculation of normal value.<sup>14</sup> Therefore, pursuant to section 773(b)(2)(A)(ii) of the Act, there are reasonable grounds to believe or suspect that Akzo Nobel's sales of purified CMC under consideration for the determination of normal value in the instant review may have been made at prices below the cost of production. Pursuant to section 773(b)(1) of the Act, we have conducted a cost of production investigation of Akzo Nobel's sales in the comparison market.

C. Calculation of Cost of Production

We have preliminarily relied upon the cost of production information provided by Akzo Nobel in its May 4, 2012, section D submission. In accordance with section 773(b)(3) of the Act, we calculated the weighted-average cost of production for each foreign like product based on the sum of Akzo Nobel's material and fabrication costs for the product, plus amounts for selling, general, and administrative (SG&A) expenses, as well as packing costs. Based on the review of record evidence, Akzo Nobel did not appear to experience significant changes in its cost of manufacturing during the period of review. Therefore, we followed our normal methodology of calculating an annual weighted-average cost.

---

<sup>14</sup> See *Purified Carboxymethylcellulose from the Netherlands; Preliminary Results of Antidumping Duty Administrative Review*, 76 FR 36519, 36521-36522 (June 22, 2011) unchanged in *Purified Carboxymethylcellulose From the Netherlands: Final Results of Antidumping Duty Administrative Review*, 76 FR 66687 (October 27, 2011).

#### D. Test of Comparison Market Prices

As required under section 773(b) of the Act, we compared Akzo Nobel's weighted-average cost of production figures to its comparison-market sales prices (net of certain discounts, any applicable movement expenses, direct and indirect selling expenses, and packing) of the foreign like product in order to determine whether sales in the comparison market had been made at prices below cost of production. In determining whether to disregard such sales, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made within an extended period of time in substantial quantities and whether the sales were made at prices which would not permit the recovery of all costs within a reasonable period of time.

#### E. Results of Cost Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of the sales of a given product were at prices less than the cost of production, we did not disregard any of the below-cost sales of that product because they were not made in substantial quantities. However, where 20 percent or more of the respondent's comparison-market sales of a model were made at prices below the cost of production, we disregarded these sales because they were made: (1) in substantial quantities within the period of review (*i.e.*, within an extended period of time), in accordance with sections 773(b)(2)(B) and (C) of the Act; and (2) at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. We used the remaining comparison-market sales, if such sales existed and were made in the ordinary course of trade, as the basis for determining normal value, in accordance with section 773(b)(1) of the Act.

In the current review, we found sales by Akzo Nobel made below the cost of production

for 20 percent or more of certain models and, therefore, we disregarded these below-cost sales from our margin calculations. *See* Akzo Nobel Preliminary Analysis Memo.

#### F. Price-to-Price Comparisons

We calculated normal value based on prices to unaffiliated customers in the comparison market. We decreased price, as appropriate, for certain discounts. We made deductions, where appropriate, for foreign inland freight and international freight pursuant to section 773(a)(6)(B) of the Act. In addition, when comparing sales of similar merchandise to U.S. sales, we made adjustments to normal value for differences in cost attributable to differences in physical characteristics of the merchandise, pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411, as well as for differences in circumstances of sale, as appropriate (*i.e.*, credit), in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We also made an adjustment, where appropriate, for a constructed export price offset, in accordance with section 773(a)(7)(B) of the Act. *See* the “Level of Trade” section below. Finally, we deducted comparison-market packing costs and added U.S. packing costs to normal value, in accordance with sections 773(a)(6)(A) and (B) of the Act.

#### G. Price-to-Constructed-Value Comparisons

Section 773(a)(4) of the Act provides that, if we are unable to find a contemporaneous comparison-market match of identical or similar merchandise for a U.S. sale, then we base normal value on constructed value. Section 773(e) of the Act provides that constructed value shall be based on the sum of the cost of materials and fabrication employed in producing the merchandise, SG&A expenses, profit, and expenses associated with packing the merchandise for shipment to the United States. We calculated the cost of materials and fabrication based on the methodology described above in the “Calculation of Cost of Production” section. In accordance

with section 773(e)(2)(A) of the Act, we based SG&A expenses (as adjusted above) and profit on the amounts incurred and realized by Akzo Nobel in connection with the production and sale of the foreign like product, in the ordinary course of trade, for consumption in the foreign country. *See* 19 CFR 351.405(b)(1).

#### Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine normal value based on sales in the comparison market at the same level of trade as the export price or constructed export price transaction. The level of trade in the comparison market is the level of trade of the starting-price sales in the comparison market or, when normal value is based on constructed value, the level of trade of the sales from which we derive SG&A expenses and profit. *See* 19 CFR 351.412(c). For constructed export price transactions, the level of trade is that of the constructed sale from the exporter to the importer. *Id.*

To determine whether comparison market sales are at a different level of trade from U.S. sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at different levels of trade, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which normal value is based and comparison market sales at the level of trade of the export transaction, the Department makes a level-of-trade adjustment in accordance with section 773(a)(7)(A) of the Act. For constructed export price sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the customer. We analyze whether different selling activities are performed, and whether any price differences (other than those for which other allowances are made under the Act) are shown to be wholly or partly due to a difference in

level of trade between the constructed export price and normal value. *See* section 773(a)(7)(A) of the Act.

Under section 773(a)(7)(A) of the Act, we make an upward or downward adjustment to normal value for level of trade if the difference in level of trade involves the performance of different selling activities and is demonstrated to affect price comparability, based on a pattern of consistent price differences between sales at different levels of trade in the country in which normal value is determined. Finally, if the normal-value level of trade is at a more advanced stage of distribution than the level of trade of the constructed export price, but the data available do not provide an appropriate basis to determine a level-of-trade adjustment, we reduce normal value by the amount of indirect selling expenses incurred in the comparison market on sales of the foreign like product, but by no more than the amount of the indirect selling expenses incurred for constructed export price sales. *See* section 773(a)(7)(B) of the Act (the CEP-offset provision).

In analyzing differences in selling functions, we determine whether the levels of trade identified by the respondent are meaningful. *See Antidumping Duties: Countervailing Duties*, 62 FR 27296, 27371 (May 19, 1997). If the claimed levels of trade are the same, we expect that the functions and activities of the seller should be similar. Conversely, if a party claims that levels of trade are different for different groups of sales, the functions and activities of the seller should be dissimilar. *See Porcelain-on-Steel Cookware from Mexico: Final Results of Antidumping Duty Administrative Review*, 65 FR 30068 (May 10, 2000), and accompanying Issues and Decision Memorandum at Comment 6.

In the present review, Akzo Nobel claimed that a constructed export price offset was required because the constructed export price level of trade was less advanced than levels of

trade in the comparison market.<sup>15</sup> In order to determine whether the comparison market sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the “chain of distribution”),<sup>16</sup> including selling functions, class of customer (customer category), and the level of selling functions for each type of sale.

Akzo Nobel reported one level of trade in the home market, the Netherlands, with one channel of distribution to two classes of customers: (1) direct sales from the warehouse located near the Akzo Nobel manufacturing plant to end users, and (2) direct sales from the warehouse located near the Akzo Nobel manufacturing plant to distributors.<sup>17</sup> Based on our review of evidence on the record, we find that the home market sales to both customer categories through the one channel of distribution were substantially similar with respect to selling functions and stages of marketing. Akzo Nobel performed the same selling functions for sales in a single home market channel of distribution, including sales forecasting, strategic planning, advertising, distributor training, packing, warehousing, inventory management, order processing, market research, providing guarantees, after sales services, freight and delivery, and invoicing.<sup>18</sup> Each of these selling functions was identical in the intensity of their provision or only differed minimally, the exception being that Akzo Nobel provided sales/marketing support and technical assistance to a different degree of involvement to different customer types.<sup>19</sup> Thus, after considering all of the above, we preliminarily find that Akzo Nobel had only one level of trade for its home market sales.

---

<sup>15</sup> See Akzo Nobel’s section C response at C-45.

<sup>16</sup> The marketing process in the United States and comparison market begins with the producer and extends to the sale to the final user or customer. The chain of distribution involved in the two markets may have many or few links, and respondent’s sales occur somewhere along this chain. In performing this evaluation, we considered respondent’s narrative responses to properly determine where in the chain of distribution the sale occurs.

<sup>17</sup> See Akzo Nobel’s section A response at A-15 and A-16; *see also* Akzo Nobel’s section B response at B-9.

<sup>18</sup> See Akzo Nobel’s section A response at A-17 through A-21 and Tab 9.

<sup>19</sup> See Akzo Nobel’s section A response at Tab 9. *See also* Preliminary Analysis Memo.



Akzo Nobel reported one constructed export price level of trade, with two separate channels of distribution in the United States. Channel 1 sales were made to order for two classes of customers, *i.e.*, end users and distributors.<sup>20</sup> The U.S. customer orders merchandise from Akzo Nobel's U.S. affiliate, AN-US, and the merchandise is shipped directly to the U.S. customer from Akzo Nobel.<sup>21</sup> Further, the customer is invoiced by AN-US, and the title passed directly from AN-US to the unaffiliated customer in the United States. Channel 2 sales were also made to two classes of customers, *i.e.*, end users and distributors, from inventory.<sup>22</sup> Specifically, the U.S. customer orders merchandise from AN-US, which is shipped out of a stock of materials maintained at AN-US's unaffiliated warehouses.<sup>23</sup> Upon examining Akzo Nobel's questionnaire responses, we preliminarily find that it has two channels of distribution for its constructed export price sales in the United States.<sup>24</sup>

For constructed export price sales, we consider only the selling activities reflected in the price after the deduction of expenses and constructed export price profit under section 772(d) of the Act. *See Micron Tech. Inc. v. United States*, 243 F.3d 1301, 1314-15 (Fed. Cir. 2001). We reviewed the selling functions and services performed by Akzo Nobel on constructed export price sales as described in its questionnaire and supplemental questionnaire responses, after these deductions. We found that selling functions performed by Akzo Nobel to its U.S. affiliate in support of the constructed export price sales were almost identical regardless of class of customers or channel of trade. Akzo Nobel reported that it provided services to both Channel 1 and Channel 2, including strategic planning, packing, warehousing, inventory management, order processing, and logistics for freight and delivery, although Akzo Nobel provided a

---

<sup>20</sup> *See id.* at A-16.

<sup>21</sup> *See id.* at A-15.

<sup>22</sup> *See id.* at A-16.

<sup>23</sup> *See id.* at A-15.

<sup>24</sup> *See id.* at A-15 through A-16, A-24 through A-27, and Tab 8; and section C response at C-9.

different degree of service to these channels for delivery, warehousing, and inventory management.<sup>25</sup> As a result of our analysis, we found that selling functions performed by Akzo Nobel for both channels are at the same level.

Next, we compared the stages in the marketing process and selling functions along the chain of distribution for home market and constructed export price sales. Akzo Nobel's home market and constructed export price sales were both made to end users and distributors. We found that Akzo Nobel performs an additional layer of selling functions at a greater degree of involvement in the home market than it provided on constructed export price Channel 1 and Channel 2 sales (*e.g.*, sales forecasting, strategic planning, advertising, distributor training, market research, technical assistance, sales and marketing support, after sales service, and invoicing).<sup>26</sup> Because these additional selling functions are significant, we find that Akzo Nobel's constructed export price sales are at a different level of trade than its home market sales.

According to section 773(a)(7)(B) of the Act, a CEP offset is appropriate when the level of trade in the home market is at a more advanced stage than the level of trade of the constructed export price sales and there is no basis for determining whether the difference in levels of trade between normal value and constructed export price affects price comparability. Akzo Nobel reported that it provided minimal selling functions and services for the constructed export price level of trade and that, therefore, the home market level of trade is more advanced than the constructed export price level of trade. Based on our analysis of the channels of distribution and selling functions performed by Akzo Nobel for sales in the home market and constructed export price sales in the U.S. market (*i.e.*, sales support and activities provided by Akzo Nobel for sales to its U.S. affiliate), we preliminarily find that the home market level of trade is at a more

---

<sup>25</sup> See Akzo Nobel's section A response at Tab 9.

<sup>26</sup> See *id.* at A-17 through A-21 and Tab 9.

advanced stage when compared to constructed export price sales because Akzo Nobel provides many selling functions in the home market at a different level of service (*i.e.*, sales forecasting, advertising, distributor training, market research, sales and marketing support, *etc.*) as compared to selling functions performed for its constructed export price sales (*i.e.*, Akzo Nobel reported that the only services it provided for the constructed export price sales were logistics for freight and delivery, packing, warehousing, inventory management, order processing, providing guarantees, and limited strategic planning and technical assistance).<sup>27</sup> Thus, we find that Akzo Nobel's home market sales are at a more advanced level of trade than its constructed export price sales. As there was only one level of trade in the home market, there were no data available to determine the existence of a pattern of price differences, and we do not have any other information that provides an appropriate basis for determining a level-of-trade adjustment; therefore, we applied a constructed export price offset to normal value for constructed export price comparisons.

To calculate a CEP offset for Akzo Nobel, we deducted the comparison market indirect selling expenses from normal value for sales that were compared to U.S. constructed export price sales. We limited the deduction by the amount of the indirect selling expenses deducted in calculating the constructed export price under section 772(d)(1)(D) of the Act. *See* section 773(a)(7)(B) of the Act.

#### Currency Conversion

We made foreign-currency conversions into U.S. dollars in accordance with section 773A(a) of the Act and 19 CFR 351.415 based on exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank. *See* Import Administration website at: <http://ia.ita.doc.gov/exchange/index.html>.

---

<sup>27</sup> *See id.* at Tab 9.

### Preliminary Results of Review

We preliminarily determine that, for the period July 1, 2010, through June 30, 2011, the following dumping margin exists:

---

| Manufacturer/Exporter                | Weighted-Average Margin (percent) |
|--------------------------------------|-----------------------------------|
| <hr/>                                |                                   |
| Akzo Nobel Functional Chemicals B.V. | 0.00                              |

---

### Disclosure and Public Comment

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of publication of this notice. Pursuant to 19 CFR 351.309(c)(1)(ii), interested parties may submit written comments in response to these preliminary results. Interested parties may submit case briefs to the Department no later than 30 days after the publication of these preliminary results. *See* 19 CFR 351.309(c)(1)(ii). Rebuttal briefs, the content of which is limited to the issues raised in the case briefs, must be filed within five days from the deadline date for the submission of case briefs. *See* 19 CFR 351.309(d)(1) and (2).

Parties who submit arguments in this proceeding are requested to submit with the argument: (1) a statement of the issues; (2) a brief summary of the argument; and (3) a table of authorities. *See* 19 CFR 351.309(c)(2). Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f). Executive summaries should be limited to five pages total, including footnotes.

Within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments raised in the case and rebuttal briefs, pursuant to 19 CFR 351.310(c). Unless the Department specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs. *See* 19 CFR 351.310(d)(1). Parties will be notified of the time and location of the hearing. Written argument and hearings requests should be electronically submitted to the Department via IA ACCESS.<sup>28</sup>

The Department will publish the final results of the administrative review, including the results of its analysis of issues addressed in any case or rebuttal brief, no later than 120 days after publication of the preliminary results, unless extended. *See* section 751(a)(3)(A) of the Act; 19 CFR 351.213(h).

#### Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated, whenever possible, an exporter/importer (or customer)-specific assessment rate or value for merchandise subject to this review as described below.

For CEP sales, we divide the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. We will direct CBP to assess the resulting percentage margin against the entered customs values for the subject merchandise on each of that importer's period of review entries. *See* 19 CFR 351.212(b).

The Department clarified its "automatic assessment" regulation on May 6, 2003. This clarification will apply to entries of subject merchandise during the period of review produced by companies in these preliminary results of review for which the reviewed companies did not know their merchandise was destined for the United States. In such instances, we will instruct U.S.

---

<sup>28</sup> *See generally* 19 CFR 351.303.

Customs and Border Protection to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, *see Assessment Policy Notice*.

We intend to issue liquidation instructions to CBP 15 days after publication of the final results of this review. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis*. Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis*. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable. *See* section 751(a)(2)(C) of the Act.

#### Cash Deposit Requirements

The following cash-deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the company listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review or in the investigation but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and

(4) the cash-deposit rate for all other manufacturers or exporters will continue to be the all-others rate of 14.57 percent, which is the all-others rate established in the investigation. *See CMC Order*, 70 FR at 39735. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

---

Paul Piquado  
Assistant Secretary  
for Import Administration

July 25, 2012 \_\_\_\_\_  
Date

[FR Doc. 2012-18904 Filed 08/01/2012 at 8:45 am; Publication Date: 08/02/2012]